

MARKHAM READ ZERNER LLC

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October 26, 2023

VIA ECF

Honorable Barbara Moses
United States District Court
Southern District of New York
New York, New York 10007

**Re: *Morgan Art Foundation Ltd. v. McKenzie*, 18-cv-04438 (JLR-BCM)
Opposition to Emergency Letter-Motion Renewing Application for a
Writ of Execution (Dkt. No. 535)**

Dear Judge Moses:

Michael McKenzie, through the undersigned counsel, opposes the motion by the Estate for a writ. The basis for this opposition is that such a writ is both unnecessary and premature.

A writ is unnecessary because we have repeatedly informed the Estate that our client will either be present or have present a representative on the scheduled pick-up date present at the pick-up facility so that they can gain access to the artwork. We have never said otherwise.

Obviously as counsel, we cannot guarantee performance by our client, but he has been advised of the court order and he has indicated that he will give access to the artwork so that UOVO can remove it. A review of the virtual library of emails attached to the Estate's motion reveals as much. Just last evening, because they asked for the identity of who, on behalf of McKenzie, would be present for the first day, and asked for his contact information, we provided it to them. See the email attached for quick reference. We also attach hereto an email that McKenzie sent to Larry Sterrs, CEO of the Star of Hope today before McKenzie received any notice of this

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application. It plainly indicates that McKenzie is going to allow access to the artwork but does raise matter of concern that he believed that the CEO ought to consider.

This motion is also premature. The basis for this motion is the supposition that next week McKenzie will not comply with the court order by allowing access to the artwork. Obviously, if he does not, there are all manner of sanctions that the Court can consider. One of those would be the execution of a writ. But until he violates the court order, *and he has said he will not*, there is nothing for this Court to do. The fact that McKenzie, as a long-time art dealer, has asked certain shipping questions concerning the transportation of the artwork in which he has an obvious and substantial financial interest, does not suggest he will not allow access to the artwork. He has simply tried to impress on the Estate, which has never shown expertise in the handling of artwork, certain questions about the care and safety of the art. Nor does the fact that he requested that the insurance include him as loss payee suggest that he is not going to allow access to the artwork. In fact, it suggests the contrary. Otherwise, why would he care about insurance? In fact, the Estate counsel told us that Mike McKenzie was named as a loss payee so they thought that was appropriate to do and thus certainly it was appropriate for McKenzie to ask about.

The reference to a firearm, made at this the very last moment, is completely non-persuasive. If that were truly a concern, why not raise it earlier? Moreover, the quoted assertion is from a disbarred former employee (Ozvaldo Gonzales) who was fired. He is simply not worthy of belief. The Estate points to no time when McKenzie ever threatened any gun violence much less actually possessed a gun.

When the Maine case was tried two summers ago, in Federal Court in Maine, it was revealed that the Maine Attorney General had charged counsel for the Estate with massive overbilling of legal fees to the Estate. It was also revealed that, by way of settlement of that

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charge, the Estate was reimbursed \$2,000,000.00 in legal fees by its lawyers, something that lawyers rarely agree to do. This application seems to us more of the same given the above.

Respectfully submitted,

/s/ John J.E. Markham, II

John J.E. Markham, II

cc: Counsel of Record via ECF

Elisa McPhee

From: Bridget Zerner <bzerner@markhamreadzerner.com>
Sent: Wednesday, October 25, 2023 5:06 PM
To: John Markham; Alfred Falzone
Cc: Seth Brewster; Elisa McPhee
Subject: RE: Indiana Artwork Relocation - Response Requested

Sensitivity: Private

**** This message was sent from an external sender ****

Alfred – we meant October 30 at Middletown, as scheduled, and Gary’s last name is D’Alessio. Thanks.

Bridget A. Zerner
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From: John Markham <jmarkham@markhamreadzerner.com>
Sent: Wednesday, October 25, 2023 4:53 PM
To: Alfred Falzone <AFalzone@eatonpeabody.com>; Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: Seth Brewster <SBrewster@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: RE: Indiana Artwork Relocation - Response Requested
Sensitivity: Private

We have again, as we told you before, been informed by our client that it will show up at the designated times and places. On the 31st, Gary (working for American Image) will be there and he can be reached at (347) 782-2447. Not sure yet who will appear on later dates. But we have been assured that someone will be.

John

John J. E. Markham, II
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If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Alfred Falzone
Sent: Wednesday, October 25, 2023 12:36 PM
To: Bridget Zerner <bzerner@markhamreadzerner.com>; John Markham <jmarkham@markhamreadzerner.com>
Cc: Seth Brewster <SBrewster@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: Indiana Artwork Relocation - Response Requested
Sensitivity: Private

Bridget:

Based on your representation that you would seek the Court's intervention regarding the insurance of the Indiana Artwork yesterday and your emails today regarding the inventory of the Artwork, we are writing for your confirmation that the relocation of the Indiana Artwork, as described below, will proceed as previously scheduled.

Please confirm by 5:00 p.m. today

1. That UOVO will be allowed to remove the Indiana Artwork (as set forth in the Award and Judgment) from the storage units in Middletown on October 30, October 31, and November 1 and from the Katonah Barn on November 6-10 (and, if necessary, on November 13) to transport it to the UOVO facility in Brooklyn;
2. That AIA representatives will be present on the above dates to allow UOVO access to the Indiana Artwork;
3. That UOVO will not be prevented, delayed, or obstructed in the performance of its work.

If you do not confirm the above by 5:00 p.m. today, we will seek the Court's intervention and renew our application for Writs of Execution.

Given that there are two working days before the start date of the relocation, we thank you for your prompt attention to this matter.

Regards,
Alfred

Alfred J. Falzone III
207-274-5266 | Eaton Peabody

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From: Bridget Zerner <bzerner@markhamreadzerner.com>
Sent: Wednesday, October 25, 2023 10:23 AM
To: Alfred Falzone <AFalzone@eatonpeabody.com>; John Markham <jmarkham@markhamreadzerner.com>
Cc: Seth Brewster <SBrewster@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: RE: Indiana Artwork Relocation
Sensitivity: Private

**** This message was sent from an external sender ****

Hi Alfred – Thanks for your responses on the insurance and appraiser questions.

Bridget Zerner

From: mm2uwords@aol.com
Sent: Thursday, October 26, 2023 3:10 PM
To: lsterrs@unitel.me
Cc: John Markham; Bridget Zerner

Larry,

I am concerned that your team is looking to take art based on an inventory. The way art is moved is with a three part manifest with one part to you, one part to me one part to Uovo. This is a simple process, the parties and driver look at the pieces and create a list so all have the same information for the protection of all so that no one can say anything is missing. With all due respect to Uovo, you can't let things in there without a manifest or you open up unlimited confusion and problems, including theft and legal problems. Realistically, Uovo is a reputable but huge company with employees ranging from ownership salaries into 6 and 7 figures down to stock people and movers who likely earn \$25 an hour. Putting boxes with blue chip art containing unknown amounts or types of art is against every logic. The inventory taken by Star of Hope which I believe is what you have we know to be defective because they took at face value whatever was marked on the boxes -- e.g. "Indiana Hope Red/Blue I/IX - IX/IX when we told them it make not be the case -- and they recorded that information anyway. We did a test of a single box two weeks ago and the labeling did not match the contents. Further, we know there are things the Estate didn't even include, which we know are in the current boxes. So the good news is when we record what we have we are certain it is more than you counted on, good news for all parties.

I assume you will not be here for the move but can you please tell the uovo people to coordinate with me as I know where everything

is and the easiest and best way to handle it which my staff can help with

best

Michael McKenzie.

My staff can help go through and count everything with your staff and Uovo.